

ESTTA Tracking number: **ESTTA196407**

Filing date: **03/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Rudolf Wild GmbH & Co. KG
Granted to Date of previous extension	03/05/2008
Address	Rudolf-Wild Strasse 107-115 Eppelheim, D-69214 GERMANY

Name	WILD Flavors, Inc.
Granted to Date of previous extension	03/05/2008
Address	1261 Pacific Avenue Erlanger, KY 41018 UNITED STATES

Attorney information	Laura Goldbard George Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038-4982 UNITED STATES afisher@stroock.com, lgoldbard@stroock.com, tm@stroock.com Phone:212-806-5400
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Applicant Information

Application No	79039383	Publication date	11/06/2007
Opposition Filing Date	03/05/2008	Opposition Period Ends	03/05/2008
International Registration No.	0926394	International Registration Date	05/17/2007
Applicant	D'ARENBERG PTY LTD Osborn Road MCLAREN VALE SA 5171 AUSTRALIA		

Goods/Services Affected by Opposition

Class 033.
All goods and services in the class are opposed, namely: Wines

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Dilution	Trademark Act section 43(c)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1296602	Application Date	04/22/1983
Registration Date	09/18/1984	Foreign Priority Date	NONE
Word Mark	WILD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1982/10/08 First Use In Commerce: 1983/01/13 Fruit Based Liquid Ingredient for Use in the Preparation of Other Foods		

U.S. Registration No.	1586995	Application Date	03/08/1989
Registration Date	03/13/1990	Foreign Priority Date	NONE
Word Mark	WILD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/05/29 First Use In Commerce: 1984/05/29 FOOD FLAVORING, NAMELY, FLAVORS [, AROMAS, ESSENCES AND DISTILLATES,] NOT IN THE NATURE OF ESSENTIAL OILS Class 032. First use: First Use: 1984/05/29 First Use In Commerce: 1984/05/29 FLAVORS, [AROMAS, ESSENCES AND DISTILLATES,] NOT IN THE NATURE OF ESSENTIAL OILS FOR THE PREPARATION OF SOFT DRINKS		

Attachments	73785403#TMSN.gif (1 page)(bytes) Opposition THE WILD PIXIE.pdf (14 pages)(332888 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/laura goldbard george/
Name	Laura Goldbard George
Date	03/05/2008

Client Matter No. 522727.0976

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial No. 79-039,383
Mark: THE WILD PIXIE
Published: November 6, 2007

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RUDOLF WILD GMBH & CO. KG	:
and WILD FLAVORS, INC.,	:
	:
Opposers,	:
	:
	:
v.	:
	:
D'ARENBERG PTY. LTD.,	:
	:
Applicant.	:
-----X	

Opposition No.

Commissioner for Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

NOTICE OF OPPOSITION

Opposer, Rudolf Wild GmbH & Co. KG, is a limited liability partnership existing under the laws of Germany, located at Rudolf Wild Straße 4-6, D-69214 Eppelheim-Heidelberg, Germany (hereinafter "Rudolf Wild"), and Opposer, WILD Flavors, Inc., a licensee of Rudolf Wild's WILD marks for, *inter alia*, flavors and ingredients for non-alcoholic and alcoholic beverages and foods, including powders and syrups for flavoring and coloring non-alcoholic beverages, is a Delaware corporation, located and doing business at 1261 Pacific Avenue, Erlanger, Kentucky 41018 (hereinafter "WILD Flavors"). Rudolf Wild and WILD Flavors will

collectively be referred to as “Opposers”. Opposers believe that they will be damaged by registration of the mark THE WILD PIXIE shown in Application Serial No. 79-039,383 and hereby oppose registration of same.

1. For many years prior to the date of first use by Applicant, Opposers have been using the trademarks WILD, WILD & Design and composite marks containing the term “WILD” therein in foreign commerce with the United States and interstate commerce within the United States in connection with flavors, aromas, essences and distillates used in the preparation of foods and soft drinks and beverages of various kinds and for fruit based liquid ingredients for use in the preparation of other foods and beverages.

2. Rudolf Wild is the owner of U.S. Registration No. 1,296,602 issued on September 18, 1984 for the mark WILD for fruit based liquid ingredient for use in the preparation of other foods. This registration is valid and subsisting, in full force and effect and incontestable. A copy of the TARR record of Registration No. 1,296,602 is annexed hereto as Exhibit 1.

3. Rudolf Wild is the owner of U.S. Registration No. 1,586,995 issued on March 13, 1990 for the mark WILD & Design for food flavoring not in the nature of essential oils and for flavors not in the nature of essential oils for the preparation of soft drinks. This registration is valid and subsisting, in full force and effect and incontestable. A copy of the TARR record of Registration No. 1,586,995 is annexed hereto as Exhibit 2.

4. By reason of extensive distribution, sale and promotion of Opposers’ goods in and throughout the United States, Rudolf Wild’s marks WILD and WILD & Design have acquired substantial goodwill, distinctiveness, secondary meaning and fame as indicating a line of flavors, aromas, essences, and distillates used in the preparation of soft drinks and foods, seasonings,

sauces, salad dressings, marinades and fruit-based liquid ingredients for use in foods having their origin exclusively with Rudolf Wild.

5. On May 17, 2007, Applicant, D'Arenberg Pty. Ltd., filed Application Serial No. 79-039,383 for the mark THE WILD PIXIE (the "Application") for wines (the "Goods"), in International Class 33, claiming Section 67 Priority based on International Registration No. 0926394.

6. Applicant's mark is likely to cause confusion with Opposers' marks. The mark sought to be registered, namely, THE WILD PIXIE, contains the word "WILD." Thus, Opposers' entire mark is subsumed in Applicant's mark.

7. The Goods in the Application are closely related to Opposers' goods. Applicant's mark is not limited to any type of wines which may include fruit-flavored wines. Opposers' goods consist of ingredients and flavors used to develop and design foods and beverage flavorings including fruit-flavored beverages and alcoholic beverages. Thus, Applicant's Goods are closely related to Opposers' goods, as Opposers' goods are the type that could be used to create Applicant's Goods. As Opposers' and Applicant's goods are closely related, there is a likelihood that consumers would be confused because the respective goods are sold under confusingly similar marks.

COUNT I **LIKELIHOOD OF CONFUSION**

8. Opposers repeat and re-allege the allegations in Paragraphs 1 through 7 as fully set forth herein.

9. In view of the confusing similarity of Applicant's trademark and Goods, Applicant's use and registration of the mark THE WILD PIXIE is likely to cause confusion, mistake and deceive the trade and public into believing that Applicant's Goods originate with or are otherwise licensed, sponsored or authorized by Opposers.

10. The use and registration of the mark THE WILD PIXIE by Applicant is likely to damage and destroy the distinctiveness, goodwill, reputation, secondary meaning and fame created and established by Rudolf Wild in its WILD and WILD & Design marks by virtue of the confusion, mistake and deception likely to occur between the respective marks in derogation of Opposers' exclusive right to continue to use the registered marks for its present goods and to expand the use of its marks to related goods and services.

11. By reason of all the foregoing, Opposers will be gravely damaged by the registration of the mark THE WILD PIXIE for the Goods identified in the Application.

COUNT II **DILUTION**

12. Opposers repeat and re-allege the allegations contained in Paragraphs 1-7 and 9-11 as fully set forth herein.

13. Rudolf Wild's WILD and WILD & Design marks are famous and the use and registration of Applicant's mark THE WILD PIXIE is likely to dilute the distinctive quality of such famous marks pursuant to 15 U.S.C. §1125(c), which is applicable in an opposition proceeding.

14. By reason of all the foregoing, Opposers will be gravely damaged by the registration of the mark THE WILD PIXIE for the Goods identified in the Application.

WHEREFORE, by reason of the confusing similarity of Applicant's and Opposers' marks and the likelihood that Applicant's mark will dilute Opposers' mark, Opposers respectfully requests that the opposition be sustained and that registration of the mark THE WILD PIXIE be refused.

Dated: New York, New York
March 5, 2008

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP
Attorneys for Opposers
180 Maiden Lane
New York, New York 10038-4982
(212) 806-5400

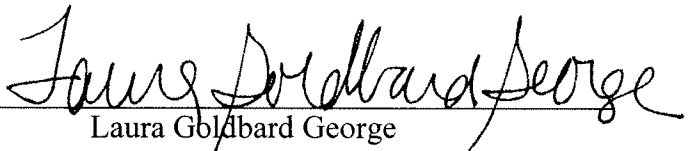
By 
Laura Goldbard George

EXHIBIT 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-05 10:34:37 ET

Serial Number: 73422717 Assignment Information Trademark Document Retrieval

Registration Number: 1296602

Mark (words only): WILD

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2004-10-26

Filing Date: 1983-04-22

Transformed into a National Application: No

Registration Date: 1984-09-18

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-11-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. RUDOLF WILD GMBH & CO. KG

Address:

RUDOLF WILD GMBH & CO. KG

Rudolf-Wild-Strasse 107-115

Eppelheim D-69214

Fed Rep Germany

Legal Entity Type: Limited Partnership

State or Country Where Organized: Fed Rep Germany

GOODS AND/OR SERVICES

International Class: 029

Class Status: Active

Fruit Based Liquid Ingredient for Use in the Preparation of Other Foods

Basis: 1(a)

First Use Date: 1982-10-08

First Use in Commerce Date: 1983-01-13

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-03-24 - Applicant/Correspondence Changes (Non-Responsive) Entered

2006-03-24 - TEAS Change Of Owner Address Received

2004-10-26 - First renewal 10 year

2004-10-26 - Section 8 (10-year) accepted/ Section 9 granted

2004-09-10 - Combined Section 8 (10-year)/Section 9 filed

2004-09-10 - TEAS Section 8 & 9 Received

2002-09-19 - Counter claim opp. for Proceeding No.

2000-06-02 - Section 15 acknowledged

2000-02-07 - Section 15 affidavit received

1990-12-13 - Section 8 (6-year) accepted

1990-08-28 - Section 8 (6-year) filed

1984-09-18 - Registered - Principal Register

1984-07-10 - Published for opposition

1984-05-16 - Notice of publication

1984-03-26 - Approved for Pub - Principal Register (Initial exam)

1984-03-22 - Examiner's amendment mailed

1984-03-19 - Assigned To Examiner
1984-03-01 - Communication received from applicant
1984-01-05 - Non-final action mailed
1983-12-02 - Assigned To Examiner
1983-08-01 - Applicant amendment prior to exam entered

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

LAURA E GOLDBARD

Correspondent

Laura E. Goldbard
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York NY 10038
Phone Number: 212-806-5400
Fax Number: 212-806-6006

Domestic Representative

BLUM KAPLAN

EXHIBIT 2

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-03-05 10:35:04 ET

Serial Number: 73785403 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1586995

Mark



(words only): WILD

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2000-03-14

Filing Date: 1989-03-08

Transformed into a National Application: No

Registration Date: 1990-03-13

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-04-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. RUDOLF WILD GMBH & CO. KG

Address:

RUDOLF WILD GMBH & CO. KG
Rudolf-Wild-Strasse 107-115

Eppelheim D-69214

Fed Rep Germany

Legal Entity Type: LIMITED LIABILITY PARTNERSHIP

State or Country Where Organized: Fed Rep Germany

GOODS AND/OR SERVICES

International Class: 030

Class Status: Active

FOOD FLAVORING, NAMELY, FLAVORS NOT IN THE NATURE OF ESSENTIAL OILS

Basis: 1(a)

First Use Date: 1984-05-29

First Use in Commerce Date: 1984-05-29

International Class: 032

Class Status: Active

FLAVORS, NOT IN THE NATURE OF ESSENTIAL OILS FOR THE PREPARATION OF SOFT DRINKS

Basis: 1(a)

First Use Date: 1984-05-29

First Use in Commerce Date: 1984-05-29

ADDITIONAL INFORMATION

Design Search Code(s):

01.15.08 - Raindrop (a single drop); Single drop (rain, tear, etc.); Teardrop (a single drop)

05.13.25 - Bales of hay or straw; Hay in bales; Other plants including bales of hay or straw; Straw in bales

27.03.04 - Plants forming letters or numerals

Prior Registration Number(s):

1372837

1390182

1396602

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-03-24 - Applicant/Correspondence Changes (Non-Responsive) Entered

2006-03-24 - TEAS Change Of Owner Address Received

2002-09-19 - Counter claim opp. for Proceeding No.

2001-03-29 - Section 7 correction issued

2001-03-14 - Section 7 amendment filed

2000-03-14 - First renewal 10 year

2000-03-14 - Section 9 granted/check record for Section 8

1999-10-29 - Combined Section 8 (10-year)/Section 9 filed

1996-07-16 - Section 8 (6-year) accepted & Section 15 acknowledged

1996-03-13 - Section 8 (6-year) and Section 15 Filed

1990-03-13 - Registered - Principal Register

1989-12-19 - Published for opposition

1989-12-19 - Published for opposition

1989-11-18 - Notice of publication

1989-10-13 - Approved for Pub - Principal Register (Initial exam)

1989-09-08 - Communication received from applicant

1989-06-02 - Non-final action mailed

1989-05-10 - Assigned To Examiner

1989-05-10 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

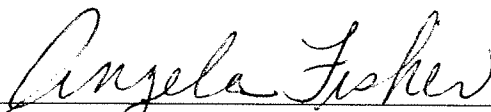
Laura E. Goldbard
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York NY 10038
Phone Number: 212-806-5400
Fax Number: 212-806-6006

Domestic Representative

STROOCK & STROOCK & LAVAN LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on counsel for D'Arenberg Pty. Ltd. by forwarding said copy on March 5, 2008, via DHL Courier, to Collison & Co., 117 King William Street, Adelaide SA 5000, Australia.



Angela Fisher